EXPLANATORY MEMORANDUM TO

THE CLIMATE CHANGE ACT 2008 (CREDIT LIMIT) ORDER 2016

2016 No. [XXXX]

1. Introduction

1.1 This explanatory memorandum has been prepared by the Department of Energy and Climate Change and is laid before Parliament by Command of Her Majesty.

2. Purpose of the instrument

2.1 The Climate Change Act 2008 (Credit Limit) Order 2016 sets a limit on the number of carbon units that may be used to meet the third carbon budget which runs from 2018 to 2022.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None.

Other matters of interest to the House of Commons

3.2 Disregarding minor or consequential changes, the territorial application of this instrument includes Scotland and Northern Ireland.

4. Legislative Context

4.1 Under the Climate Change Act 2008 ("the Act"), the Secretary of State has a duty to set a limit on the net amount of carbon units that can be credited to the net UK carbon account for each budgetary period.

4.2 The Carbon Accounting Regulations 2009[1] as amended by The Carbon Accounting (2013-2017 Budgetary Period) Regulations 2015[2] set out what the "carbon units"[3] are for the purposes of Part 1 of the Act, and the circumstances in which they are to be debited from and credited to the 'net UK carbon account' for the first and second budgetary period which covers 2008 – 2012 and 2013-2017 respectively. The Climate Change Act 2008 (Credit Limit) Order 2016 makes reference to carbon units that will be credited to or debited from the net UK carbon account in respect of each year of the 2018 – 2022 budgetary period, the accounting regulations for which must be made under section 27(3) of the Act by March 2019.

4.3 The credit limit for the third budgetary period (2018-2022) was to be set by 30 June 2016 (section 11). The Climate Change Act 2008 (Credit Limit) Order 2016 was laid on 30 June 2016 but will come into force on the day it is made.

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[1] The Carbon Accounting Regulations 2009 and the Carbon Accounting (Amendment) Regulations 2009, SI 2009 No. 1257 and SI 2009 No. 3146, respectively, available from: www.opsi.gov.uk/si/si2009/uksi_20091257_en_1 and www.opsi.gov.uk/si/si2009/uksi_20093146_en_1

[2] The Carbon Accounting Regulations 2015, SI 2009 No. 775 available from: http://www.legislation.gov.uk/uksi/2015/775/contents/made

[3] The following are carbon units; assigned amount units, European Union allowances, certified emission reductions, emission reduction units and removal units. Each carbon unit has a value of 1 tonne of carbon dioxide equivalent.

5. Extent and Territorial Application

5.1 This instrument extends to the whole of the United Kingdom.

5.2 The territorial application of this instrument is the United Kingdom.

6. European Convention on Human Rights

6.1 The Secretary of State The Rt Hon Amber Rudd MP has made the following statement regarding Human Rights:

"In my view the provisions of the Climate Change Act 2008 (Credit Limit) Order 2016 are compatible with the Convention rights."

7. Policy background

What is being done and why

7.1 Carbon units represent the reduction or avoidance of greenhouse gas emissions overseas.

7.2 The Climate Change Act places a requirement on the Secretary of State to set a limit on the net amount of carbon units that can be credited to the net UK carbon account during each budgetary period. In addition, section 15 of the Act requires that the Government must have regard to the need for UK domestic action on climate change.

7.3 Article 3 of the Climate Change Act 2008 (Credit Limit) Order 2016 sets the limit on the net use of carbon units for the third budgetary period (2018 – 2022) at 55,000,000 units, with each unit representing one tonne of carbon dioxide equivalent. This limit excludes any net use of credits which result from the operation of the European Union Emissions Trading System ("the EU ETS"). The UK is currently projected to meet the third carbon budget. However, factors outside the Government's direct control could change this assessment at short notice. This credit limit is considered to provide an appropriate level of flexibility to account for the uncertainty about future emissions. The ability to purchase credits could also enable the UK to support mitigation action in developing countries. A purchase of credits would contribute to the development of a global carbon market, which could reduce the global cost of action on climate change.

Consolidation

7.4 None.

8. Consultation outcome

8.1 The Act does not require public consultation on the issue of setting the credit limit for the third carbon budget period covered by the Order to which this Explanatory Memorandum relates.

8.2 There are, however, specific consultation requirements contained in the Act: the Secretary of State must take into account the Committee on Climate Change's (CCC) advice provided under section 34(1)(b) in relation to the budgetary period, and must consult the Devolved Administrations (DAs) before laying the draft Order proposing credit limit for each budgetary period. The Secretary of State has taken into account the views of the CCC and the DAs in reaching a decision on the credit limit. This is set out in the Impact Assessment (IA).

8.3 The CCC advised Government that there should be no use of credits to meet the third carbon budget outside that allowed through operation of the EU Emissions Trading System, since the use of credits would, in its view, substitute for appropriate domestic action. The Government consulted the DAs for their views and these are set out in the IA.

9. Guidance

9.1 No guidance has been published in relation to the matters contained in the Order, because no guidance is considered to be required in addition to this memorandum and the supporting impact assessment.

10. Impact

10.1 There is no impact on business, charities or voluntary bodies.

10.2 There is no impact on the public sector.

10.3 An Impact Assessment is submitted with this memorandum and will be published alongside the Explanatory Memorandum on the legislation.gov.uk website.

11. Regulating small business

11.1 The legislation does not apply to activities that are undertaken by small businesses.

12. Monitoring & review

12.1 We will continue to track progress of emissions projections against the third carbon budget, and to update our published emissions projections annually.

13. Contact

13.1 For queries, please contact Tom Bain at the Department of Energy and Climate Change: carbonbudgets@decc.gsi.gov.uk